

# **Minutes of the meeting of the Bar-Bench-Media Conference**

A meeting of the Bar-Bench-Media Conference (hereinafter "Conference") was held on Monday, July 14, 2008 at 12:30 p.m. in the Supreme Court conference room of the Carvel State Office Building in Wilmington, Delaware.

The quorum requirement was met. Conference members in attendance included:

## **Members from the Bench**

Justice Carolyn Berger, Supreme Court  
Judge Peggy Ableman, Superior Court  
Judge Joseph F. Flickinger III, Court of Common Pleas

## **Members from the Bar**

Francis G.X. Pileggi, Fox Rothschild LLP  
Christine Schiltiz, Parkowski Guerke & Swayze, P.A.  
Chad M. Shandler, Richards, Layton & Finger  
Chuck Durante, Connolly Bove Lodge & Hutz LLP

## **Members from the Media**

Chris Carl, WDEL  
Elizabeth M. Bennett, Delaware Law Weekly

## **Participating via tele-conference**

Judge Arlene Minus Coppadge, Family Court  
Chief Magistrate Alan Davis, Justice of the Peace Courts  
Rita Farrell, freelance

**Guest:** Carole Kirschner, Court Administrator, Court of Common Pleas

The first item on the agenda was the approval of minutes from the April 21, 2008 meeting, which was tabled so that a typo could be corrected.

The second agenda item dealt with Conference membership. Chad Shandler was welcomed as a new member. Shandler was appointed by Allen Terrell, President of the Delaware State Bar Association, to represent the Bar. Terrell noted, via e-mail, that although he was stepping down from the Conference, he would be available to discuss any issues of concern to the Conference.

Also under membership, the Conference discussed representation of the Court of Chancery. Chris Carl noted that he sent a letter on April 29, 2008 to Delaware Supreme

Court Chief Justice Myron Steele recommending a Chancellor/Vice Chancellor be named to the Conference. On May 1, Carl received a letter from Chief Justice Steele noting that Justice Carolyn Berger is the Supreme Court's liaison to the Conference, and she is a former member of the Court of Chancery. On May 19, Carl received a letter from Justice Berger stating that she contacted Chancellor Chandler and invited any interested member of the Court of Chancery to attend future meetings. She also suggested the Conference send Chancery members notices of the times and locations of meetings .

The next agenda item dealt with expanded electronic media access to Delaware's courts and The Disney Report. Carl noted that the draft report had been circulated to all Conference members, and suggested revisions had been incorporated. A motion was approved to submit the report to Chief Justice Steele.

The next topic dealt with formal policies regarding the release of court administrative records. Chief Magistrate Davis submitted information on public access policies for the Delaware Supreme Court, Court of Chancery, Superior Court, Court of Common Pleas, Family Court, Justice of the Peace Court and the Administrative Office of the Courts.

The next discussion centered on electronic filing and the COTS system. Carole Kirschner, Court Administrator, Court of Common Pleas was asked to update the Conference on the status of COTS implementation and provide an explanation of the system.

Kirschner noted that since the last time she spoke to the Conference, the Courts had implemented Phases 1, 2 and 3 of the new system. Phases 1 and 2 implemented civil and related financial case processing in the Justice of the Peace Court. Phase 3 was implemented on June 2, 2008 and includes civil and financial case processing in the Court of Common Pleas and the Superior Court in Sussex County. Phase 4, scheduled for November 2008, will extend that implementation to civil cases in the Court of Common Pleas and the Superior Court in Kent and New Castle Counties.

Phase 3 also saw the introduction of the Judiciary's e-filing system – eFlex – in the Court of Common Pleas and JP Court. Eventually, it will be expanded for use in the Family Court as well. The Superior Court and the Court of Chancery plan to continue to use their current LexisNexis system, although the Superior Court expects to use eFlex for criminal matters.

Access to case information and documents through LexisNexis would not change for those courts using LexisNexis. The eFlex system currently limits access to case information and documents to parties to cases. However, the Judiciary could provide an ID for interested media personnel which would allow them access to eFlex

information. While no decisions have been made regarding that access, I would assume that a modest fee would be charged for system usage. That fee could take the form of an annual registration fee or a per page fee as an example.

Another COTS product – CourtConnect – has been deployed in the Court of Common Pleas and the Superior Court in Sussex County. CourtConnect allows access to general case information, including dockets (similar to the information available in our legacy system.) It does not provide access to actual case documents. At present, users must come to the courthouse to access CourtConnect and continue to request copies of documents “over the counter” in the individual courts. However, Court Connect is a web product and can be made accessible to the public through the internet should the courts decide to do that.

The decision as to whether to allow remote access to Court Connect, as well as other decisions regarding public access are currently under discussion at the COTS Operational Policy Committee (OPC), which is primarily comprised of the presiding judges of each the courts. The issue has only recently been presented to them and is likely to take several months before final decisions are made.

When asked about public access to information, Kirschner stated the courts are trying to balance a litigant's right to privacy and the public's right to know. Kirschner said the courts are taking a conservative approach, but understand the importance of open information.

Rita Farrell asked Kirschner if electronic filing would result in restrictions on documents that are currently available to the public. Kirschner responded that the public will continue to have access to what is currently available, and potentially greater access, not including Superior and Chancery Courts. Kirschner did state that, overall, she believes there will be an increased opportunity for access.

Kirschner was asked when Superior and/or Chancery Courts would change from Lexis/Nexus to COTS. Kirschner said she was not sure. She noted that Superior Court has discussed using COTS for some applications rather than Lexis/Nexus, which might increase public access. Kirschner said the Operational Policy Committee would be meeting in August to discuss this issue, but it would not be a one-meeting discussion. Judge Davis noted that there will likely be an incremental approach, rather than “all at once.” He also said a decision on this would take several months. The Conference also discussed the potential for moving toward Internet access for certain documents.

Judge Flickinger asked what other states are making available on the Internet. Kirschner said several states make documents public via the web, but there are problems with redaction and making private information public. She said there have

been numerous occasions where documents were made public, then withdrawn. Kirschner also said several states have issued access policies regarding the Internet, and Delaware is studying those.

Farrell asked if the federal PACER system is an option. Kirschner responded that COTS e-file system is modeled to an extent after PACER, and that it should be easy to use and give a good amount of information to the public, but a decision still needs to be made regarding access. Kirschner said there may be a "modest, fairly inexpensive" charge for public access, although that has not been finalized. She said there may be a one-time or annual registration fee. She said the Courts will determine how much any fees will be.

Farrell also asked if there would be computer terminals for the public to access. Kirschner said public terminals already exist for Superior Court and Court of Common Pleas. Kirschner was asked if a terminal would be placed in the Press Room, and if there would be public passwords to use the system. She replied the Court would need to provide users with a user name and password, but there has been no discussion or decision on that topic. Kirschner said there is a concern in the Court over potential misuse of information, particularly private information, and that the Court is mindful of the need to protect information. Judge Davis pointed out that JP Court hears a large number of pro se cases, and due to the sheer volume of those cases, information could not be reasonably redacted and published on the web due to the manpower that such an undertaking would require.

Carl closed this discussion by thanking Kirschner for her time and effort in updating the Conference.

No new business was entertained.

The next meeting date was set for Monday, October 20<sup>th</sup>, 2008 in the Supreme Court conference room in the Carvel State Office Building. Conference members decided to begin the meeting at 1 p.m., instead of 12:30 p.m.